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**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

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| JINSOO KIM,<br>Plaintiff and Appellant,<br>v.<br>STEPHEN SON,<br>Defendant and Respondent. | G039818<br>(Super. Ct. No. 06CC02419)<br>O P I N I O N |

Appeal from a judgment of the Superior Court of Orange County, Corey S. Cramin, Judge. Affirmed.

Reich Radcliffe, and Richard J. Radcliffe for Plaintiff and Appellant.

Khiterer Law Office, and Vladimir Khiterer for Defendant and Respondent.

Jinsoo Kim begins his opening brief by stating, "Blood may be thicker than water, but here it's far weightier than a peppercorn."[1] Kim appeals from the trial court's refusal to enforce a gratuitous promise, handwritten in his friend's own blood, to repay money Kim loaned and lost in two failed business ventures. He faults the trial court for not discussing or deciding in its statement of decision the issue of whether Kim's forbearance (waiting over a year to file a meritless lawsuit against his friend, Stephen Son), supplied adequate consideration for Son's blood-written document. We conclude the trial court's statement of decision sufficiently set forth the facts and law supporting its ultimate conclusion Son's promise to repay the money was entirely gratuitous and unenforceable, even when reduced to blood. Forbearance to sue cannot supply consideration to what the trial court determined was an invalid claim. In the context of this contract dispute, Son's blood was not weightier than a peppercorn.

I

Son was the majority shareholder (70 percent owner) and operated a South Korean company, MJ, Inc. (MJ). He was also the sole owner of a California corporation, Netouch International Inc. (Netouch). After several months of investigation, Kim loaned money and invested in these companies. It was undisputed he wired the money directly to the corporate bank accounts. Son did not personally receive any of the funds. Kim invested 100 million won,[2] and later loaned 30 million won to MJ. He loaned $40,000 to Netouch. There was no evidence these investments or loans were personally guaranteed by Son.

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[1] The obscure peppercorn reference can be found in *Hobbs v. Duff* (1863) 23 Cal. 596, 602-603 ["'What is a valuable consideration? A peppercorn; and for aught that appears by the pleadings in this case, there was no greater consideration than that for the supposed assignment,' etc."].

[2] The won (원) (sign: ₩; code: KRW) is the currency of South Korea.

Unfortunately, these businesses failed and Kim lost his money. In October 2004, Son and Kim met in a sushi bar where they consumed a great deal of alcohol. When they were at the bar, Son asked the waiter for a safety pin, used it to prick his finger, and then wrote a "promissory note" with his blood. The document, translated from Korean to English, reads, "Sir, please forgive me. Because of my deeds you have suffered financially. I will repay you to the best of my ability." At some point that same day, Son also wrote in ink "I hereby swear [promise] that I will pay back, to the best of my ability, the estimated amount of 170,000,000 [w]ons to [Kim]."

Well over a year later, in June 2006, this blood-written note became the basis for Kim's lawsuit against Son alleging: (1) default of promissory note; (2) money had and received; and (3) fraud. He claimed Son agreed in the "promissory note" to pay Kim 170 million won, which is approximately equivalent to $170,000.

After holding a bench trial, the court ruled in Son's favor. In its statement of decision, the court determined the "blood agreement" was not an enforceable contract. The court made the following findings: There was no evidence Son agreed to personally guarantee the loan or investment money. Son wrote the note in his own blood "while extremely intoxicated and feeling sorry for [Kim's] losses." The blood agreement lacked sufficient consideration because it "was not a result of a bargained-for-exchange, but rather a gratuitous promise by [Son] who took personally that [Kim], his good friend, had a failure in his investments that [Son] had initially brought him into." The court reasoned the agreement lacked consideration because Son "was not required to and did not guarantee these investments and loans. The [c]ourt refuses to enforce a gratuitous promise even when it is reduced to blood." The court also rejected the fraud claim, relying on "credible evidence" Son intended for the businesses to succeed, and he never made any promises to Kim without the intent of performing them.

Kim filed objections to the statement of decision, claiming inter alia, the court failed to address whether Kim's forbearance from suing Son in 2003 and 2004 was

consideration for the blood written promissory note. The court did not modify its statement of decision and entered the final judgment in July 2007. Kim appealed.

II

Kim raises two issues on appeal: (1) Did the trial court erroneously fail to consider or apply Kim's forbearance as consideration of Son's blood agreement? and (2) Did the statement of decision adequately address the forbearance issue?

*(1) Forbearance*

"Consideration may be forbearance to sue on a claim, extension of time, or any other giving up of a legal right, in consideration of some promise. [Citations.]" (1 Witkin, Summary of Cal. Law (10th ed. 2005) Contracts, § 211, p. 246.) "The slightest forbearance will suffice: 'Even though the forbearance is for one day only, there is sufficient consideration as the law does not weigh the quantum.' [Citations.]" (*Id.* at pp. 246-247.) Moreover, "The compromise of a claim, either valid, doubtful, or disputed (but not void) is good consideration, the claimant giving up his or her asserted right to recover the whole amount as consideration for a promise to pay a lesser amount. [Citations.]" (*Ibid.*)

"However, if the forbearance has no value, it will not suffice. [Citation.]" (1 Witkin, Summary of Cal. Law, *supra*, Contracts, § 211, p. 247.) And relevant to this case, "If a claim is wholly invalid, neither forbearance to sue nor a compromise thereof can be good consideration. (*Union Collection Co. v. Buckman* (1907) 150 C[al]. 159, 164 . . . .) *City Street Imp. Co. v. Pearson* (1919) 181 C[al]. 640, [649] . . . applied this doctrine with great strictness. A promissory note was given in consideration of forbearance to foreclose a lien upon a street assessment, which both parties believed was valid. However, the assessment was void for technical reasons that were ascertainable from the public record. *Held*, the note was unsupported by consideration. . . . (See *Orange County Foundation v. Irvine Co.* (1983) 139 [Cal.App.]3d 195 . . . [promise to

compromise wholly unfounded claim is not valuable consideration . . .] . . . .)" (1 Witkin, Summary of Cal. Law, *supra,* § 220, pp. 253-254.)

Here, the purported forbearance to sue cannot be good consideration because Kim's claims against Son were wholly invalid. As determined by the trial court, any claim Son personally owed Kim money was invalid. The statement of decision noted it was undisputed the corporations (MJ and Netouch) were valid separate corporate entities and those businesses received Kim's loans and investment money. The court concluded Son did not guarantee the money on behalf of the two corporations. He did not personally receive any of Kim's money. And, Kim does not dispute a shareholder/owner generally is not personally liable for the debts of a corporation. (See *Mesler v. Bragg Management Co.* (1985) 39 Cal.3d 290, 301 [society legally recognizes the benefits of individual limitation of business liability through incorporation, so "the corporate form will be disregarded only in narrowly defined circumstances," and only when justice so requires]; *Pacific Landmark Hotel, Ltd. v. Marriott Hotels, Inc*. (1993) 19 Cal.App.4th 615, 628.) Consequently, any debt collection or breach of contract claim Kim may have had against the corporations, could not be legally imputed to Son, individually. In other words, Kim's forbearance in filing a meritless lawsuit cannot supply adequate consideration for Son's gratuitous promise.

Moreover, Kim does not dispute the trial court's conclusion credible evidence established Son was not liable for fraud. Accordingly, his alleged forbearance to sue on the clearly unfounded tort claim would not constitute valuable consideration. We conclude the trial court properly decided Kim's lawsuit was based entirely on a gratuitous unenforceable promise, and as such, the court did not need to address the immaterial issue of forbearance.

*(2) Statement of Decision*

Code of Civil Procedure section 632 states in relevant part: "In superior courts, upon the trial of a question of fact by the court, written findings of fact and

conclusions of law shall not be required. The court shall issue a statement of decision explaining the factual and legal basis for its decision as to each of the principal controverted issues at trial upon the request of any party appearing at the trial. . . . The request for a statement of decision shall specify those controverted issues as to which the party is requesting a statement of decision. After a party has requested the statement, any party may make proposals as to the content of the statement of decision. . . ."

"A trial court rendering a statement of decision under Code of Civil Procedure section 632 is required only to state ultimate rather than evidentiary facts. A trial court is not required to make findings with regard to detailed evidentiary facts or to make minute findings as to individual items of evidence. Only where a trial court fails to make findings as to a material issue which would fairly disclose the determination by the trial court would reversible error result. Even though a court fails to make a finding on a particular matter, if the judgment is otherwise supported, the omission is harmless error unless the evidence is sufficient to sustain a finding in favor of the complaining party which would have the effect of countervailing or destroying other findings. A failure to find on an immaterial issue is not error. [Citation.] In issuing a statement of decision, the trial court need not address each question listed in a party's request. All that is required is an explanation of the factual and legal basis for the court's decision regarding such principal controverted issues at trial as are listed in the request. (*Miramar Hotel Corp. v. Frank B. Hall & Co.* (1985) 163 Cal.App.3d 1126, 1130 . . . .)" (*Nunes Turfgrass, Inc. v. Vaughan-Jacklin Seed Co*. (1988) 200 Cal.App.3d 1518, 1525.)

Here, the trial court's statement of decision sufficiently delineated the factual and legal basis of the court's ultimate decision Kim failed to show the blood agreement was an enforceable contract or that Son defrauded him. As noted previously, the court determined Son, while extremely intoxicated, made a gratuitous unenforceable promise to repay what the corporations owed "to the best of [his] ability." The court also made the specific finding there was no evidence Son had personally guaranteed the debt

or showing Son received any of the money. Given this lack of evidence, there was no basis upon which to consider the issue of forbearance as a substitute form of consideration. If a claim is invalid, forbearance is immaterial. The court's failure to specifically discuss and reject the forbearance claim did not render the statement of decision inadequate.

III

The judgment is affirmed. Respondent shall recover his costs on appeal.

O'LEARY, J.

WE CONCUR:

SILLS, P. J.

RYLAARSDAM, J.